

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No. 5295
<b>Big Sky Owners Association, Inc.</b>	)	NAL/Acct. No. MB-200741410170, MB-
	)	200741410285
Licensee of FM Translator Station K257AE	)	FRN: 0004988085
West Fork, Montana	)	File No. BRFT-20051216AAO

**FORFEITURE ORDER**

**Adopted: September 30, 2009**

**Released: October 1, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Big Sky Owners Association, Inc. ("BSOA"), licensee of FM translator station K257AE, West Fork, Montana ("Station"), for willfully and repeatedly violating Section 73.3539 of the Commission's Rules ("Rules") and Section 301 of the Communications Act of 1934, as amended (the "Act") by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. The Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars (\$7,000) to BSOA for these violations.<sup>2</sup> In response to the NAL, BSOA submitted a letter from Executive Director Mary Jane McGarity ("Letter") on March 9, 2007.

3. As noted in the NAL, BSOA's renewal application for the Station's current license term was due on December 1, 2004, four months prior to the April 1, 2005, license expiration date.<sup>3</sup> BSOA did not file the application until December 16, 2005, more than eight months after the Station's license expired.

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> On February 16, 2007, the staff issued an initial NAL. *Big Sky Owners Association, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3304 (MB 2007). On March 12, 2007, the staff issued an order setting aside the initial February 16, 2007, NAL. *Big Sky Owners Association, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 4847 (MB 2007). A second NAL was erroneously issued on March 1, 2007. *Big Sky Owners Association, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4104 (MB 2007). On March 19, 2007, the subject NAL was released. *Big Sky Owners Association, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5336 (MB 2007). It is this March 19, 2007, NAL, which also granted the K257AE license renewal application, that is reflected in the Commission's CDBS database. We therefore cancel the March 1, 2007, NAL below. Additionally, BSOA responded only to the initial (February 16, 2007) NAL. Although that NAL has been set aside, for administrative convenience, we will consider BSOA's response letter to be filed with the respect to the subject (March 19, 2007) NAL.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

It failed to seek special temporary authority to operate after the license expired and provided no explanation for the untimely filing of the renewal application. On March 19, 2007<sup>4</sup>, the staff advised BSOA of its apparent liability for a forfeiture of \$7,000 for its failure to timely file a renewal application for the Station and for operating the Station without authorization.<sup>5</sup>

4. In the Letter, BSOA states that its failure to timely file the renewal application was unintentional and was caused by a “significant” personnel turnover at the time the renewal filing was due. Therefore, it argues, the forfeiture should be cancelled.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>8</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>9</sup>

6. BSOA does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, it asserts that the delay was due to a significant staff turnover with the retirement of Dee Rothschilder, the association’s main administrator.<sup>10</sup> BSOA further states that “[d]ue to the timing of the turnover it may have resulted in the BSOA inadvertently missing its deadline for filing the renewal of its license for [the Station]. It was unknown to me that this had happened . . . .”<sup>11</sup> As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the Commission’s requirements are willful violations.<sup>12</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>13</sup> Although we sympathize with the difficulties

---

<sup>4</sup> See *supra* note 2.

<sup>5</sup> The Commission granted the above-referenced license renewal application on March 19, 2007.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> Letter at 1.

<sup>11</sup> *Id.*

<sup>12</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>13</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

BSOA faced in the wake of the departure of its main administrator, BSOA, as the licensee, is ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.<sup>14</sup>

7. We have considered BSOA's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that BSOA willfully<sup>15</sup> and repeatedly<sup>16</sup> violated Section 73.3539 of the Rules and Section 301 of the Act.<sup>17</sup> However, given the Commission's recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act,<sup>18</sup> we reduce the forfeiture amount *sua sponte* to \$500.<sup>19</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, that the Notice of Apparent Liability for Forfeiture issued on March 1, 2007 (NAL/Acct. No. MB-200741410170) IS HEREBY CANCELLED.

9. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>20</sup> that Big Sky Owners Association, Inc. SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>21</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be

---

<sup>14</sup> See, e.g., *Educational Media Foundation*, Letter, 2008 WL 4693171 (MB 2008) (citing *Request for Waiver by Center City Schools*, Order, 17 FCC Rcd 22424 (2003) ("it is the applicant who has responsibility ultimately for the timely submission of the application.")).

<sup>15</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

<sup>16</sup> Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>17</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>18</sup> See, e.g., *KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950, 20952 (MB 2007) (issuing NAL in the amount of \$500 for translator stations licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

<sup>19</sup> See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8741-8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing).

<sup>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>22</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Big Sky Owners Association, Inc., P.O. Box 160057, Big Sky, Montana, 59716.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

---

<sup>22</sup> See 47 C.F.R. § 1.1914.